IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 1213 of 1996

in

SPECIAL CIVIL APPLICATIONNo 3136 of 1995

with

LETTERS PATENT APPEAL NO. 1311 OF 1996

in

SPECIAL CIVIL APPLICATION NO.3136 OF 1995

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL and
MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

RAMESHCHANDRA B. KAHDHAR

Versus

CENTRAL EXCISE AND CUSTOMS DEPTT.

Appearance:

MR MB GANDHI for Appellant

MR JAYANT PATEL for Respondent No. 1, 2

CORAM : MR.JUSTICE J.M.PANCHAL and
MR.JUSTICE A.L.DAVE
Date of decision: 26/10/1999

ORAL JUDGEMENT (Per Panchal, J.)

#. Both these appeals, which are instituted under Clause 15 of the Letters Patent, are directed against judgment dated August 21, 1996, rendered by the learned Single Judge in Special Civil Application No. 3136 of 1995. As the appeals involve determination of common questions of facts and law, we propose to dispose them of by this common judgment.

#. The appellant in Letters Patent Appeal No.1213 of 1996 is the original petitioner. He is the owner of property bearing Block No.VI of Stadium House, at Navrangpura, Ahmedabad. An area admeasuring 129.43 sq. metres was let out by the original petitioner to Central Excise and Customs Department, Division No.III under a lease deed. The lease was for a period of five years. The Directorate of Estates, Government of India, had issued an office memorandum dated September 1, 1982, stipulating that the rent should be got reassessed from Central Public Works Department ('CPWD' for short) on the expiry of period of five years from the date of original assessment and after every five years thereafter. The grievance made by the original petitioner was that, though CPWD had issued certificate dated December 17, 1994 reassessing the rent, the rent was not revised by the lessee. Under the circumstances, the petitioner filed Special Civil Application No.3136 of 1995 and prayed the Court to issue a writ of mandamus directing the respondents to implement assessment made by the Central Public Works Department as indicated in its certificate dated December 17, 1994 and to make the payment of rent at the rate mentioned in the said certificate. It was also prayed to direct the respondents to clear the accounts for the period prior to September 9, 1993 and to make payment of the difference amount which had accrued to the petitioner owing to less payment of rent.

#. An affidavit in reply was filed on behalf of the original respondents controverting the averments made in the petition. In the reply, it was claimed that petition under Article 226 of the Constitution was not maintainable in view of the provisions of Section 28 of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947. It was stated in the reply that alternative remedy was available to the petitioner under the Rent Act for enhancement of rent and, therefore, the petition was

liable to be dismissed. What was claimed in the reply was that no case was made out by the petitioner for grant of reliefs mentioned in the petition and, therefore, the petition should be dismissed.

#. After hearing the parties, the learned Single Judge noted that there was no dispute that under certificate dated September 9, 1988, the CPWD had assessed the rent of the premises and taking the average of two figures mentioned in the said certificate, rent should be assessed at the rate of Rs.6116/- for the period from 1988 to 1992. The learned Single Judge also took into consideration certificate dated September 8, 1993 and held that the original petitioner was entitled to rent at the rate of Rs.11,113/- per month for the period 1992-93. Again, contents of certificate dated December 17, 1994 were taken into consideration by the learned Single Judge and it was deduced that the original petitioner was entitled to rent at the rate of Rs.11,704/- per month for the period mentioned in the said certificate. The learned Single Judge, by the impugned judgment, has allowed the petition directing the respondents to fix the rent of the said premises under different certificates as referred to above for the different periods and to make the payment of any amount due to the original petitioner after adjusting the amount of rent paid to him pursuant to the interim orders passed in the petition. This direction is challenged by the Central Excise and Customs Department as well as Union of India in Letters Patent Appeal No.1311 of 1996, whereas the original petitioner has challenged that part of the said judgment by which the prayer made by him to direct the respondents to pay arrears of rent with interest is rejected by the learned Single Judge.

#. We have heard learned counsel for the parties at length. The contention that the High Court had no jurisdiction to entertain the petition under Article 226 of the Constitution in view of the provisions of Section 28 of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, cannot be accepted. Article 226 not being one of those provisions of the Constitution which may be changed by ordinary legislation, the powers under Article 226 cannot be taken away or curtailed by any legislation short of amendment of the Constitution. It is well settled the even where a statutory provision bars the jurisdiction of Courts, generally, it will not bar the jurisdiction of the High Court under Article 226. Having regard to the facts of the case, it cannot be said that there was inherent lack of jurisdiction in entertaining petition filed by the petitioner under

Article 226 of the Constitution and, therefore, the plea that the impugned judgment should be set aside as the High Court had no jurisdiction to entertain the petition under Article 226 will have to be rejected and is hereby rejected.

#. The plea that in view of the alternative remedy available under the provisions of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, the petition should not have been entertained and the petitioner should have been relegated to the alternative remedy available to him under the said Act also cannot be accepted at this stage. It may be stated that another owner of the premises had filed Special Civil Application No.6435 of 1991 claiming similar such relief and therein notice was ordered to be issued to the respondents, i.e. the department, at the admission stage. The department had filed reply contesting the petition, inter alia, on the ground that alternative remedy was available under the Rent Act and, therefore, the petition should not be entertained. However, after hearing the learned counsel for the parties at length, the learned Single Judge had thought it fit to issue Rule and had entertained the petition. Thereafter, Special Civil Application No.3136 of 1995, out of which Letters Patent Appeal No.1311 of 1996 arises, was placed for admission hearing and as petition involving similar question was admitted earlier, this petition was also admitted and Rule was issued therein. It is well settled that once the petition is admitted, it should not be rejected on the ground that alternative remedy is available to the petitioner (see Hirday Narain v. Income Tax Officer, Bareilly, AIR 1971 SC 33, paragraph 12). The petition filed by the original petitioner was not only entertained by the learned Single Judge, but was heard on merits of the case. Moreover, with reference to Special Civil Application No.2398 of 1993, the Enforcement Directorate had addressed a letter dated March 19, 1996 to the Additional Central Government Standing Counsel and requested him to bring to the notice of the Court instructions contained in the said letter. By the said letter, the department had shown its readiness land willingness to pay rent based on recognized principle of valuation as per the Government's usual practice in this regard, i.e. Rs.6600/- per month with effect from June 13, 1987 and Rs.12,440/- per month with effect from June 13, 1992 and had left the matter specifically to the decision of the High Court. When the department had agreed to pay revised rent on the basis of recognized principle of valuation from June 13, 1987 and subsequently from June 13, 1992, it would have been unreasonable to relegate the original petitioner to

alternative remedy available to him under the Rent Act for the purpose of revision of rent from September 1, 1982 to August 31, 1987. Having regard to all these circumstances, we are of the opinion that no error was committed by the learned Single Judge in entertaining the petition on merits, though plea of alternative remedy available under the Rent Act was raised.

#. The submission that determination of rent after taking the average of two figures mentioned in different certificates is unreasonable and, therefore, the impugned judgment should be set aside has no merits. It may be mentioned that the Enforcement Directorate had addressed a letter dated March 19, 1996 to the learned Additional Central Government Standing Counsel in Special Civil Application No.2398 of 1993, instructing him to bring to the notice of the Court the decision of the department in the matter. In the said letter, it was specifically mentioned that the department was agreeable to pay the rent based on recognized principle of valuation as per the Government's usual practice in this regard, i.e. Rs.6600/- per month with effect from June 13, 1987 and Rs.12,440/- per month with effect from June 13, 1992. Determination of rent was specifically left to the Court. Under the circumstances, the learned Single Judge has exercised discretion and determined the rent after taking average of the two figures mentioned in different certificates. The method adopted by the learned Single Judge for determination of rent cannot be said to be either arbitrary or illegal or erroneous in any manner, so as to warrant interference of this Court in the present appeal. Therefore, the impugned judgment cannot be set aside on the ground that erroneous method was adopted by the learned Single Judge while determining the rent for different periods.

#. Thus, we do no find any substance in any of the contentions urged on behalf of the appellants in Letters Patent Appeal No.1311 of 1996 and the same is liable to be dismissed.

#. So far as appeal filed by the owner of the property claiming interest on arrears of rent is concerned, we find that the learned Single Judge has exercised discretion of not granting interest to the owner of the property for arrears of rent. The exercise of the discretion cannot be said to be unreasonable or arbitrary so as to warrant interference by this Court in the appeal. In fact, the department could not pay the revised amount of rent because of non-availability of certificate from CPWD for which the department cannot be

penalized. Having regard to the fair stand which was taken by the department, as is reflected in its letter dated March 19, 1996, we are of the opinion that the learned Single Judge was justified in not entertaining the prayer made by the owner of the property to direct the respondents to pay arrears of rent with interest. On overall view of the matter, we do not think that any error is committed by the learned Single Judge in not awarding interest to the owner of the property so far as arrears of rent are concerned. Under the circumstances, Letters Patent Appeal No.1204 of 1996 filed by the owner of the property claiming interest is also liable to be dismissed.

#. For the foregoing reasons, both the appeals fail and are dismissed with no orders as to costs.

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